

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

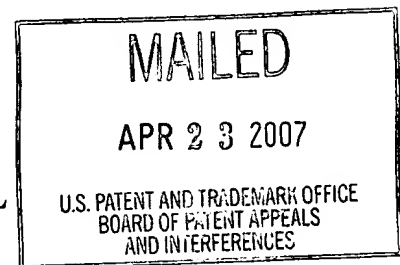
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ING VOJTECH BENETKA, and JAROSLAVA DVORAKOVA

Appeal 2007-2025
Application 09/925,696

ORDER DISMISSING APPEAL



Appellants filed a Notice of Appeal on August 16, 2005. On Feb 13, 2006, the Appellants filed their Appeal Brief. On December 05, 2006, the Examiner filed an Examiner's Answer which included a new ground of rejection against the claim.

Title 37 C.F.R. § 41.39 states if an examiner's answer contains a new ground of rejection, appellants must, within two months, either:

1. Request that prosecution be reopened by filing a § 1.111 reply; or
2. Request that the appeal be maintained by filing a reply brief.
3. If appellants fail to take action, the appeal will be *sua sponte* dismissed as to the claims subject to the new ground(s) of rejection.

On April 18, 2007, counsel for Appellants, Mark P. Bourgeois, Reg. No. 37,782, contacted Dianne E. Maggard, Lead Paralegal Specialist for the Board

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of Patent Appeals and Interferences via telephone. Mr. Bourgeois indicated that no response to the Examiner's Answer had been filed. According, the Appeal is dismissed. For more information on the Board's rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

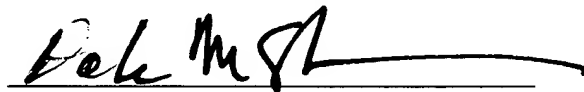
<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Accordingly, it is

ORDERED that the Notice of Appeal filed August 16, 2005, is dismissed.

The application is being returned to the examiner for further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

A handwritten signature in black ink, appearing to read "Dale M. Shaw", is written over a horizontal line.

Dale M. Shaw
Chief Appeals Administrator
(571)272-9797

dm

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